

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
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Inquiry Concerning the Deployment of)
Advanced Telecommunications Capability to)
All Americans in a Reasonable and Timely)
Fashion, and Possible Steps to Accelerate)
Such Deployment Pursuant to Section 706 of)
the Telecommunications Act of 1996)
)
_____)

GN Docket No. 04-54

REPLY COMMENTS OF THE REAL ACCESS ALLIANCE

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May 24, 2004

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REPLY COMMENTS OF THE REAL ACCESS ALLIANCE

The Real Access Alliance (the “RAA”)¹ files these Reply Comments in response to the Commission’s *Notice of Inquiry*² and to take exception to MCI’s request that the Commission adopt national rules governing access to buildings by competitive service providers.³ The RAA believes that MCI’s request is ill-informed and outside the scope of this proceeding.

¹The members of the Real Access Alliance are: the Building Owners and Managers Association International (“BOMA”), the Institute of Real Estate Management (“IREM”), the International Council of Shopping Centers (“ICSC”), the National Apartment Association (“NAA”), the National Association of Industrial and Office Properties (“NAIOP”), the National Association of Realtors (“NAR”), the National Association of Real Estate Investment Trusts (“NAREIT”), the National Multi-Housing Council (“NMHC”), and The Real Estate Roundtable.

² *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, Notice of Inquiry, GN Docket No. 04-54 (rel. Mar. 17, 2004).

³ See MCI Comments at 22-23.

I. THE REAL ACCESS ALLIANCE OPPOSES MCI'S RECOMMENDATION THAT THE FCC ADOPT BUILDING ACCESS RULES.

Since August of 1999, the Real Access Alliance has filed no less than 148 comments, *ex parte* notices and other documents in eight separate dockets at the Commission.⁴ Each of these 148 filings had a common theme: Imposing mandatory access to buildings of any kind – federal or nonfederal, residential or commercial – is unnecessary, unlawful, and unconstitutional.⁵

MCI asserts that Commission action is necessary to eliminate “barriers” faced by competitive service providers. As the RAA has repeatedly demonstrated, no such barriers exist, other than ordinary market forces.

The position of the Real Access Alliance is, in summary: (1) Commission regulation of building access is not necessary, because the market is working and building owners are granting access in response to tenant demand; (2) the Communications Act gives the Commission no

⁴ These dockets include in numeric order: Petition for Forbearance of Sections 251(c)(3), (c)(4) and (c)(6) in New Build, Multi-Premises Developments, WC Docket No. 03-220; Petition for Declaratory Ruling That the Location of the Demarcation Point Pursuant to 47 C.F.R. & 68.105(d)(2) Preempts the Location of the Demarcation Point Pursuant to § 25-4.0345(1)(R)(2) of the Florida Administrative Code WC-03-1 I2; Promotion of Competitive Networks in Local Telecommunications Markets WT Docket No. 99-217; Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996, CC Docket No. 98-146; In the Matter of Wireless Communications Association International, Inc. Petition for Rulemaking To Amend Section 1.4000 of the Commission's Rules to Preempt Restrictions on Subscriber Premises Reception or Transmission Antennas Designed to Provide Fixed Wireless Services; Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 CC Docket No. 96-98; Telecommunications Services Inside Wiring; Customer Premises Equipment, CS Docket No 95-184; Implementation of the Cable Television Consumer Protection Act of 1992; Cable Home Wiring, MM Docket No. 92-260; Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection to Simple Inside Wiring to the Telephone Network, CC Docket 88-57.

⁵ Joint Comments of the Real Access Alliance, *In the Matter of Promotion of Competitive Networks in Local Telecommunications*, CC Docket No. 99-217, filed August 27, 1999; *see also* Joint Reply Comments of the Real Access Alliance (filed September 27, 1999).

jurisdiction over building owners or their property; (3) any attempt to require property owners to grant physical access to their properties would be a taking under the Fifth Amendment; and (4) Congress has not expressly authorized the FCC to take private property for the purpose of forced access. For these reasons, the Commission should reject the MCI proposal.

II. AS IT DID IN THE FIRST THREE SECTION 706 REPORTS, THE COMMISSION SHOULD DEFER CONSIDERATION OF BUILDING ACCESS TO MORE DIRECTLY APPLICABLE PROCEEDINGS.

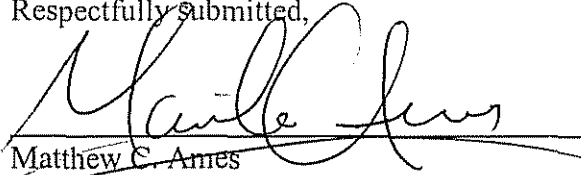
In its first Section 706 Report,⁶ the Commission stated, “[w]e are considering the issue of access to MDUs in several proceedings In these proceedings, we can address more fully any questions regarding our statutory or constitutional authority to take any particular action and the need for action.” Thus, the Commission has already recognized that the issues raised by MCI are better addressed in other proceedings. There is no need for the Commission to make recommendations based on the minimal information submitted in this docket, when the Commission has available a much more complete record regarding the issues of building access in other more relevant dockets.

⁶ *Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion*, Report, 14 F.C.C. Rcd 2398 (1999) at ¶ 104.

III. CONCLUSION

The Commission must not interfere with the rights of property owners to manage their buildings. The competitive real estate market will ensure that tenants get the services they want. Commission regulation of access to buildings is unnecessary, unlawful, and unconstitutional.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Matthew C. Ames", written over a horizontal line.

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